(3) final

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.NO. 1728 /2003.

PETITIONER

Lochan Prasad Patel, son of Shri Hemlal Patel (Marar), aged about 30 years, occupation Panchayat Karmi (Sachiv), Gram Panchayat Bagchawa, Tah. Gharghora, Distt. Raigarh (Chhattisgarh)

VERSUS

RESPONDENTS

1. State of Chhattisgarh, through Secretary, Department of Panchayat and Rural Development, Mantralay, D.K.S. Bhawan, Raipur (Chhattisgarh).
2. Sub Divisional Officer (Revenue), Tahsil Gharghora, Distt. Raigarh, Chhattisgarh.
3. Deputy Director, Gram Panchayat and Rural Development, Social Welfare, Raigarh (Chhattisgarh).
4. Chief Executive Officer, Janpad Panchayat Gharghora, Distt. Surguja (Chhattisgarh)
5. Gram Panchayat/Gram Sabha Bagchawa, Tah. Gharghora, Distt. Raigarh (Chhattisgarh), through : Sarpanch Gram Panchayat Bagchawa.

No. 1527 to 03
presented by Shri
dated 11.06.03

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF MANDAMUS, CERTIORARI QUO WARRANTO.

XI-HC-22

(62)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP/1728/03 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	15-9-2004 Shri A.N. Bhakta, counsel for the petitioner. Shri Sanjay S. Agrawal, Govt. Advocate for the State/ respondents No.1 to 4. None for respondent No.5. Heard both the counsel. The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India, questioning the legality, propriety and correctness of the resolution dated 16.2.2003 passed by the Gram Sabha, whereby the Gram Sabha had decided to remove the petitioner from the post of Panchayat Karmi (Secretary) and also the order dated 28.4.2003 passed by the Sub Divisional Officer, Revenue, whereby the objections filed by the petitioner against the Gram Sabha were rejected. The case of the petitioner is that he was appointed as Panchayat Karmi in the Gram Panchayat: Bagchawa on 26.10.1995 and since then he was working as Panchayat Karmi. However, the Gram Sabha resolved to remove the petitioner from the said post on 16.2.2003. Aggrieved by the said order, the petitioner moved the Sub Divisional Officer (Revenue), Tehsil: Gharghoda. However, vide impugned order dated 28.4.2003 the petitioner's petition was rejected by the Sub Divisional Officer. Further case of the petitioner is that the order of removal was passed against him in the absence of full quorum, without giving any show cause notice, charge sheet, no opportunity of being heard was given to the petitioner, and the principle of justice was violated. It has been prayed that the impugned order be quashed.	

XI-HC-22

(63)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP/1228/07 सन् 200

.....विरुद्ध.....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Return has been filed on behalf of respondents No.1 to 4 in which misconduct of the petitioner has been highlighted. It is denied that the resolution of the Gram Sabha was not passed by a required quorum. It is further denied that the principle of natural justice has been violated and no opportunity of hearing was given to the petitioner.

The main contention of the learned counsel for the petitioner is that the petitioner was removed without following the procedure as envisaged in Chhattisgarh Panchayat Service (Discipline and Appeal) Rules, 1999 (hereinafter referred to as 'the Rules, 1999'). Admittedly, the petitioner was working as Panchayat Karmi and the procedure for imposing major penalty has been laid down in Rule 7 of the Rules, 1999. Sub-rule (1) of Rule 7 says that

> *"No order, imposing on a member of the Panchayat Service, any of the penalties specified in clause (iv) to (via) of rule 5 shall be passed except after a formal inquiry is held as far as may be, in the manner hereinafter provided."*

Sub-rule (2) of Rule 7 envisages that

> *"When an order for formal inquiry has been made, the disciplinary authority shall frame Definite charges on the basis of allegations and shall communicate such charges, along with the statement of the allegations, to the member of the Panchayat Service and also require him to submit, within such time as may be specified a written statement of defence and also to state whether he desires to be heard in person."*

XI-HC-22

(64)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —1—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Sub-Rules (3), (4), (5), (6), (7), (8), (9), (10) and (11) of Rule 7 further prescribe the procedure to be followed before imposing any major penalty specified in clause (iv) to (via).

It is an admitted position that no enquiry was conducted against the petitioner before removing him from the post of Panchayat Karmi as per Rule 7 of the Rules, 1999. Therefore, on this ground, the impugned order dated 16.2.2003 (Annexure P-2) i.e. the decision of the Gram Sabha to remove the petitioner from the post of Panchayat Karmi is liable to be quashed.

In the circumstances, the impugned order is quashed. However, it is made clear that the respondents are not precluded from conducting fresh enquiry on the misconduct of the petitioner.

With the above observations and direction, the petition stands disposed of.

Parties are entitled for certified copy of this order.

Sd/-
L.C. Bhadoo
Judge

Barve/Soma

[पीछे देखिये